UNITED STATES
v.
CHARLES D. JONES ET AL.

IBLA 71-262 Decided September 3, 1971

Mining Claims: Discovery

A finding of invalidity of mining claims located for limestone and various other minerals will be affirmed in the absence of any showing that mining the minerals can reasonably be expected to yield a profit over the cost of extraction and removal and where the preponderance of evidence supports a conclusion that there is no practical, economical method of mining it at all.

3 IBLA 177

IBLA 71-262	:	Contest R-2016
UNITES STATES	:	Mineral patent application
v.	:	rejected; placer claims
CHARLES D. JONES ET AL.	:	held null and void
	:	Affirmed

DECISION

Charles D. Jones et al. 1/ have appealed from the Hearing Examiner's decision of March 15, 1971, in which the Old Quarry No. 1 and No. 2 placer mining claims were declared null and void and the contestees' application for patent was rejected.

The claims were located in 1965 for limestone, uranium, gold and silver. They are within the San Bernardino National Forest about four air miles due north of the city of San Bernardino, California, and less than one mile south of Lake Gregory. The contest action was initiated on behalf of the Forest Service by a complaint alleging the following:

> (a) There are not disclosed within the boundaries of the mining claims minerals of a variety subject to the mining laws sufficient

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1/ The claims at issue are association placers of 160 acres each. The contest action involved the claimants of record, namely: Charles D. Jones, Mildred M. Jones, William W. Jones, Charles D. Jones, Jr., Julius Walton Balzer, Iris Eileen Balzer, Elizabeth Anne Balzer and Henry Arthur Balzer. At the hearing all of the claimants named Jones were represented by Charles D. Jones and all claimants named Balzer were represented by J. W. Balzer. None of the Balzer claimants have appealed. In an unsigned letter to the Riverside land office dated April 14, 1971, Charles D. Jones stated, "The J. W. Balzer Family have been suceeded in interest by the Jack H. Jones Family by amended locations dating back to 1956. Due to the Balzer family failing to pay their share of work and other expenses and being notified and not paying according to law. [sic]" The identity of Jack H. Jones is not known, but he is not a claimant of record nor a party to the contest.

in quantity, quality, and value to constitute a discovery.

(b) The land embraced within the claims is nonmineral in character.

(c) Portions of the claims were not open to the operation of the mining laws at the time of location.

The examiner premised his decision on his finding that there was a lack of discovery as alleged in (a) above, and he concluded that it was therefore unnecessary to rule on allegations (b) and (c).

The problem presented by this case is somewhat unusual in that the topography, the conformation of the claims, and the presence thereon of the lawful improvements of other interests, both public and private, are such as to make the prospect of a successful mining venture extremely remote.

At the hearing the Government established its prima facie case through the testimony of Emmett B. Ball, Jr., a mining engineer employed by the Forest Service. Ball examined the claims with a Geiger counter with negative results and took samples from the indicated discovery points. When assayed, the samples revealed the presence of only insignificant amounts of metalliferous minerals. Further, Ball stated that since the claims consisted of hard rock any metalliferous mineral would have to occur in a lode form rather than as placer. Ball was less certain regarding the propriety of locating placer claims for the limestone, stating that while it occurs here as solid rock in place, he had seen such limestone deposits patented both as lode and as placer claims.

Ball testified that the limestone is intruded with dikes, which would require selective mining, and that some areas are high in silica and other impurities which would have to be separated out. He stated that he found no significance in the various showings revealed by the assay reports except that there is carbonate rock there. The other minerals, he said, are inconsequential because, "There is just not enough to have any value." (Tr. 43.)

The most telling evidence produced by the contestant dealt with the physical difficulty which would be encountered in any serious effort to remove quantities of material from these claims.

They are located in sec. 26, T. 2 N., R. 4 W., S.B.M., and at an elevation of from 4,800 to 5,200 feet. Ball testified that the southwest part of Old Quarry No. 1 and "a good portion of Old Quarry No. 2" are on an extremely steep mountain face which is a south-facing slope. On this slope the claims are traversed by Highway 18, known as "Rim of the World Highway." Ball stated that to mine below the highway would "take the highway out," while it would be impossible to mine above it without dumping material on the road.

High above the highway, near or along the crest of the ridge, the claims are crossed diagonally northwest to southeast by a string of cabins and cottages erected under special use permits granted by the Forest Service, some of which date back to 1914. A topographic map of the area prepared by the Geological Survey in 1954 indicates that there are at least 52 such buildings within the boundaries of the two claims. (Exhibit 3.) Ball stated that if a mining operation were attempted above the highway far enough back so that it would not dump material on the highway, it would undermine the cabins on the ridge above. In this connection the Government introduced its Exhibit 14, a copy of the act of February 14, 1931 (46 Stat. 1115) which provides as follows:

> CHAP. 186 - An act to safeguard the validity of permits to use recreational areas in the San Bernardino and Cleveland National Forest.
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> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where a special-use permit to use, for other than pasture purposes, a tract of land not exceeding 160 acres in areas, in the San Bernardino and Cleveland National Forests, has been issued under the regulations of the Secretary of Agriculture, the land so rented shall not be subject to appropriation, entry, alienation, or adverse use or occupancy unless such permit is discontinued or revoked.

On the north slope of the mountain the claims are traversed by a county road. All three of these improved areas, Highway 18 on the south slope, the line of cabins on the ridge, and the county road on the north slope are roughly parallel and traverse the claims in a generally northwest to southeast direction, dividing the claims into

four areas. The steepness of the terrain renders much of the area inaccessible to heavy equipment at points where the best exposures of limestone appear.

Ball testified that about 1957 when he was privately employed as a mining engineer by Victorville Lime Rock Company, he inspected this property for his company and didn't even take a sample because he could see that they could not mine it economically. He stated that he was still of that opinion.

Ball's opinion was buttressed by the 1930 report of W. B. Tucker, of the State Mineralogist's Office, introduced as contestees' Exhibit B in which Tucker noted that the then-new highway was cut through the deposit on the southwest slope, exposing limestone in the highway cut for about 1,000 feet. He concludes his report by observing, "The mountainside is very steep and quarrying without interfering with the highway would be difficult."

Moreover, the nature of the problems which would be encountered in any serious effort to mine the property are graphically illustrated in several photographs of the claims showing the roadways cut through the limestone deposits on the sides of the mountain.

Previous efforts by earlier locators to quarry stone from this deposit were apparently abandoned. Perhaps 700 tons were removed from one point and the remains of an old crusher and chute and other debris from that operation still remain on the premises. At a different point, there are signs of yet another abortive attempt, in which about 100 tons were "moved" but not removed from the claim. Ball testified that the material would have to be hoisted or back-packed to get it out.

The chief witness in rebuttal was Mr. Thomas Todd, a mining engineer employed by Kaiser Cement and Gypsum Corporation as an assistant superintendent at a limestone quarry. He testified that he had taken samples which on assay by Eisenhauer Laboratories, showed 81.917% and 95.365% calcium carbonate, while a sample of the porphyry on the claims assayed .15% lithium and .10% bismuth. Mr. Todd's testimony dealt extensively with the geology of the deposit which he compared favorably with a deposit in present production. When questioned regarding the feasibility of mining the deposit in view of the steep mountainside, the roads and the cabins, Mr. Todd stated:

> Feasibility encompasses quite a few things. It encompasses transporting material to market, the actual mining of it, economic conditions at the time--I am sure you realize all this-- I would say that it is possible but I feel that further study should be done on the area possible core drilling to be done in the area, to determine the extent and quantity of material that is there that could be mined.
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> Feasibility--all these things have to be done before a continuing feasibility can be determined. . . . Quarrying might be difficult. To say whether quarrying is the only feasible type of mining to employ is problematical. If it is found that there is a higher grade of limestone underground and whether it could be used on a pharmaceutical grade level, it might be economic to mine it on an underground basis.
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> There has not been enough study done on the two claims to submit a feasibility. It is a question. (Tr. 82, 83.)

Mr. Clifford Coy, a practical miner of long experience, testified that both claims contained a large deposit of what appears to be a good grade of limestone. He also testified regarding the geology of the deposit. He was not questioned regarding possible mining methods or the feasibility of extracting the material as a profitable mining venture.

Julius Walton Balzer took the stand and made a statement, a portion of which follows:

> The question has been raised whether we are or are not in production, and I will point-blank state that we are not in production on this claim. The only reason people establish mining claims is to hope to mine it in the future with the latest technology and techniques available. I think we have established there is a valuable claim there, and I really don't think that 1957 opinions of feasibility should sway this hearing.

To illustrate his point Mr. Balzer prefaced the foregoing with reference to the prevailing opinions of the periods prior to the invention of the airplane, the Lindberg flight and the moon landing as to the feasibility of such endeavors.

Following the hearing, Jones submitted a spectographic analysis of a sample of the dikes and sills showing various mineral constituents. These include lithium, tantalum, bismuth, iridium, beryllium, molybdenum, vanadium, zinc, gadolinium, and lanthanum. Mr. Jones has computed the volume per ton and a dollar value for each constituent and concluded that a ton of such material has a value in excess of $10,000. 2/

Jones has obviously relied on a 100 percent separation and recovery of each of the minerals mentioned, including iridium, which his analysis indicates constitutes 0.005% and which he values at $251.90 per ton. He has not suggested a mining method nor a process of separation and recovery of each mineral nor has he indicated a production cost. Moreover, his sudden post-hearing determination that the claims contained these impressive values was not supported by probative evidence at the hearing, where most of the minerals listed were not even mentioned.

There has been no showing that any of the minerals described, either at the hearing or subsequently, can be mined with a reasonable prospect of success.

With regard to the limestone which seems to be the one mineral of apparent good quality which is also present in quantity, nothing was presented in evidence as to the method or cost of extraction beyond the casual suggestion that underground methods might be feasible in the event that it were discovered that the limestone is of pharmaceutical quality, which has not been shown to be the case.

To warrant a finding of discovery the evidence must be adequate to demonstrate that "minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. . . ." Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); United States v. Coleman, 390 U.S. 599 (1968).

2/ In adding the various amounts, Jones mistakenly arrived at a total of $10,096.16. The correct sum is $10,399.46.

In determining whether a mining claim has been validated by discovery of a valuable mineral deposit, each case must be examined on its own facts by applying the prudent man test, which includes a consideration of the economic factors upon which a prudent man's expectation of developing a valuable mine would be based. United States v. Hines Gilbert Goldmines Company, 1 IBLA 296 (1971).

Here there is not only an absence of any showing that the material can be reasonably expected to yield a profit over the cost of extraction and removal, but the preponderance of the evidence supports a conclusion that there is no practical, economical method of mining it at all.

Appellants' attorneys have requested a new hearing on the grounds that the claimants were not represented by qualified counsel at the hearing, contending that the claimants failed to adduce substantial evidence which was then available to them. We find no failure in the hearing to elicit the evidence then available, and no description of the additional evidence has been supplied so that we might judge whether a rehearing would be productive. See United States v. Maurice Duval et al., 1 IBLA 103 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the request for rehearing is denied and the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Joan B. Thompson, Member

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Martin Ritvo, Member